IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

CRL.A.No. 609 of 1999(A)

CC.858/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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APPELLANT: COMPLAINANT

V.P.KARUNAKARAN NAIR
S/O.NARAYANAN, AZHIKODE
KANNUR.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS: ACCUSED AND STATE :

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1. M.P.SURESH, S/O.KANNAN NAIR
   NALUPURICKAL KUTHERICHAL HOUSE
   P.O.AZHIKODE, KANNUR.

2. THANKAMANI, W/O.N.P.SURESH
   NALUPURICKAL KUTHERICKAL HOUSE
   -DO- -DO-

3. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SMT.JEENA JOSEPH
BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

CRL.A.No.609 of 1999

Dated this the 26th day of March, 2007

JUDGMENT

The appellant is the complainant in C.C.858/1997, in which the accused was acquitted by the court below. The prosecution case is that the accused two in number, the husband and wife dishonestly induced him to part with a sum of Rs.18,000/- by promising to arrange visa to Muscat and did not arrange the visa and towards the amount received the impugned cheque for Rs.18,000/- was issued. The same was not presented before the bank in time on the representation of the accused that the amount will be paid. The court below considering the evidence that consisted of the testimony of Pws' 1 to 3 and Exts. P1 to P6 that included the disputed cheque as well as Exts. P2 to P4 the letters allegedly sent by the first accused promising repayment of the amount and Exts. D1 and D2 found that the complainant could not establish the offence alleged beyond reasonable doubt. The case suggested at the instance of the accused and as is seen from Ext.P6 reply notice is that the complainant was taken abroad after arranging the visiting visa with the understanding

that the complainant would himself find out a job abroad. The version of defence is that the first accused had to spend considerable amounts for arranging visiting visa and also for the residence of the complainant at Muscat. It was also suggested that the complainant was employed during the above period at the shop of the accused at Muscat and was paid salary also. Ext. D1 is the cheque for Rs.23,000/- issued by the first accused. According to the defence, the above cheque was issued to the complainant earlier and the first accused was paid Rs.20,000/- for the expenses to arrange the visiting visa for the complainant and thereafter he returned the amount with interest for which Ext.D1 cheque was returned.

2. On the other hand PW1, the complainant has testified that it was on the undertaking of the first accused that he would arrange a visa for him for a job in Muscat and as per his instructions an amount of Rs.18,000/- was paid to the second accused, who is the wife of the first accused. He had gone abroad on a visiting visa. But no job could be arranged by the first accused and he was forced to return. He has also produced Exts. P2 to P4 letters sent by the first accused to him from the

Middle East promising to repay the amount and asking for time. The suggestion in the cross-examination of PW1 is that the above letters were sent with respect to the amount as mentioned in Ext. P6 reply notice. The recitals in Exts. P2 to P4 is to the effect that immediately on his return i.e., of the first accused he would pay the amount. It is also mentioned in Ext. P2 letter that he has dropped the idea of arranging the visa. In both letters he has pleaded for time and assured repayment. It is the consistent version of the complainant that Rs.23,000/- was given as a loan to A2 and when she returned the amount the impugned cheque was given back.

3. It is the version of PW1 that the visiting visa was arranged by his brother who is working abroad and that he had resided at Muscat during the period with his brother. He has denied that he was employed in the shop of the first accused. He has also denied the suggestion that he had stealthily removed certain cheque leafs including Ext. A1 cheque leaf from the shop of the accused while he was working therein at Muscat. It appears that the above case of the defence is hard to believe especially considering the fact that there would not have been

any occasion for the accused to keep the signed cheque leafs drawn on the Syndicate Bank at his shop in Muscat.

4. In the light of the evidence adduced in the matter, I find that the acquittal of A1 is not justified. It is proved beyond reasonable doubt that A1 is guilty for the offence under Section 420 IPC. He is sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for another one month. The fine amount, if realised, shall be paid to the complainant.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
JUDGE

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